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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

REBECCA FRANKS,

Plaintiff,

vs.

BIOMET, INC.; BIOMET
ORTHOPEDICS, LLC,

Defendants.

Case No.: 2:16-cv-00264-APG-BNW

Honorable Andrew P. Gordon

Honorable Brenda Weksler

**JOINT STIPULATION TO AMEND
SCHEDULING ORDER
(Third Request)**

Case Remanded: December 28, 2018

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BIOMET ORTHOPEDICS, LLC

1 Plaintiff Rebecca Franks (“Plaintiff”), together with Defendants Biomet Inc. and
2 Biomet Orthopedics, LLC (collectively, “Biomet,” and together with Plaintiff, the “Parties”),
3 by and through their respective undersigned counsel, respectfully move the Court for an
4 extension of pre-trial deadlines as amended by the Court on April 28, 2020 (Dkt. No. 34) by
5 approximately 90 days, due to the coronavirus (COVID-19) public health emergency in
6 Nevada, California, and other states where the Parties’ counsel and client representatives are
7 located, and for additional reasons outlined below. In support of their stipulation, the Parties
8 state as follows:

9 1. As this Court knows, this case involves a variety of product liability claims
10 against Biomet due to Plaintiff’s use of the Biomet M2a Metal-on-Metal Hip Replacement
11 System. The Parties have actively litigated this case upon remand. Declaration of Theodore
12 O’Reilly (“O’Reilly Decl.”), ¶ 2. To avoid a repetitive account of this matter’s previous
13 proceedings in the instant stipulation, the Parties refer the Court to ¶¶ 1-7 in the Parties’
14 earlier Stipulation to Amend Scheduling Order. Dkt. No. 30.

15 2. The United States District Court for the District of Nevada has recognized the
16 increasing threat of COVID-19 and its effects on case proceedings both in and outside of
17 Court, as acknowledged in the Court’s General Orders 2020-10, 2020-05, and 2020-04.

18 3. Due to this ongoing public health crisis, the Parties’ discovery efforts,
19 including fact witness and expert depositions, have experienced significant delays, as
20 Plaintiff’s counsel, Biomet’s counsel, the Parties to this action, and witnesses, live all over
21 the United States and cannot safely travel due to the risk and travel limitations posed by
22 COVID-19. O’Reilly Decl., ¶ 3.

23 4. Furthermore, the Parties’ attempts to subpoena and otherwise communicate
24 with the medical facility containing Plaintiff’s right explant device has been frustrated due
25 to limited personnel, administrative availability, and prioritized focus on COVID-19
26 treatment. Both Parties have issued subpoenas to this facility and are still in the process of
27 communicating with the facility to determine the location and chain of custody of this
28 explant. *Id.*, ¶ 4.

5. As a result, the Parties cannot proceed with expert discovery until they receive a response from the facility regarding this explant. *Id.*, ¶ 5.

6. In addition to this investigative delay experienced by both Parties, the Parties' attempts at any mediation attendance is severely affected as well. *Id.*, ¶ 6.

7. Consequently, the Parties hereby stipulate to continue the discovery and other pre-trial deadlines for approximately 90 days. *Id.*, ¶ 7.

8. The Parties agree that it would be most productive to resolve the explant issue first and to conduct upcoming proceedings and preparation for these proceedings in-person to the extent possible. *Id.*, ¶ 8.

9. This is the Parties' third request for an extension of deadlines. *Id.*, ¶ 9.

10. This request does not affect a trial date, as one has not yet been set. *Id.*, ¶ 10.

11. This request is not made for the purpose of undue delay. *Id.*, ¶ 11.

IT IS HEREBY STIPULATED AND REQUESTED, by and between the Parties and their respective counsel, that discovery, motion, and other pre-trial deadlines be extended as specified in this stipulation as follows:

- Last date to complete case-specific fact discovery from October 1, 2020 to **December 30, 2020**.
- Last date for Plaintiff to designate and serve expert witness reports for case-specific experts from November 17, 2020 to **February 16, 2021**.
- Last date for Defendants to designate and serve expert witness reports for case-specific experts from December 23, 2020 to **March 23, 2021**.
- Last date to disclose rebuttal experts from January 4, 2021 to **April 5, 2021**.
- Last date to complete case-specific expert discovery from January 27, 2021 to **April 27, 2021**.
- Last date to file motions *in limine* and dispositive motions from March 4, 2021 to **June 2, 2021**.

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1 Dated: September 9, 2020

FAEGRE DRINKER BIDDLE & REATH LLP

2 By: /s/ Theodore O'Reilly

3 Tarifa B. Laddon (*Pro Hac Vice*)

4 Theodore O'Reilly (*Pro Hac Vice*)

5 Attorneys for Defendants

6 BIOMET, INC. and BIOMET ORTHOPEDICS,
7 LLC

8 Dated: September 9, 2020

JAMES R. CHRISTENSEN P.C.

9 By: 

James R. Christensen

10 Attorneys for Plaintiff

11 REBECCA FRANKS

12
13 **IT IS SO ORDERED**

14 **DATED:** 5:04 pm, September 14, 2020

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16 

17 **BRENDA WEKSLER**

18 **UNITED STATES MAGISTRATED JUDGE**